

# **EXHIBIT A**

Declaration of Stephen Smith, Director of the Division of TennCare

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

THE STATE OF TENNESSEE, et al.,

*Plaintiffs,*

v.

XAVIER BECERRA, in his official capacity  
as Secretary of the United States Department  
of Health and Human Services, et al.,

*Defendants.*

Case No. 1:24-cv-161-LG-BWR

**DECLARATION OF STEPHEN SMITH**

Pursuant to 28 U.S.C. § 1746, I, Stephen Smith, duly affirm under penalty of perjury as follows:

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.

2. I serve as the Director of the Division of TennCare (“TennCare”). TennCare is responsible for administering Tennessee’s Medicaid program, as well as the State’s Children’s Health Insurance Program (“CHIP” or “CoverKids”) and Program of All-Inclusive Care for the Elderly (“PACE”).

3. As Director, I am responsible for the management of the Division of TennCare and its programs. These responsibilities include ensuring compliance with state and federal anti-discrimination laws. That comprises overseeing the teams that review and evaluate rules and regulations promulgated by federal agencies, including the U.S. Department of Health and Human

Services (“HHS”), to determine whether they necessitate policy changes. And where such changes are necessary—either because TennCare does not have a policy required by the regulation or has a conflicting policy—I am ultimately responsible for executing a plan for bringing TennCare into compliance.

4. TennCare’s mission is to improve lives through high-quality, cost-effective care. Accomplishing this mission requires partnership between the provider community, stakeholders, advocates, families, and TennCare employees. TennCare currently serves almost 1.5 million Tennesseans, including low-income individuals, pregnant women, children, caretaker relatives of young children and older adults and adults with disabilities.

5. As of May 8, 2024, approximately 824,000 minors were enrolled in Tennessee’s Medicaid program and CoverKids.

6. As of May 8, 2024, approximately 670,000 adults were enrolled in Tennessee’s Medicaid program and CoverKids.

7. TennCare received approximately \$10.3 billion in total federal funding in State Fiscal Year 2022-2023. That includes more than \$10.2 billion in federal funding for Tennessee’s Medicaid program, \$109.8 million in federal funding for CoverKids, and \$10.8 million in federal funding for the State’s PACE program. TennCare estimates that the federal share expended for each program will be even greater in State Fiscal Year 2023-2024.

8. HHS funding is used to pay a portion of TennCare’s administrative costs, including many TennCare employees’ salaries and benefits. Most TennCare employees’ salaries and benefits are partially funded by the Medicaid Administration Grant, and certain employees’ salaries and benefits are specifically approved under distinct grant programs, such as Medicaid’s Money Follows the Person.

9. TennCare annually contributes approximately \$11.6 million to Tennessee's state employee health insurance plan ("State Plan") on behalf of its employees, including approximately \$7.3 million in HHS funds.

10. TennCare's Medicaid program does not provide coverage for sex-transition surgeries. *See* Tenn. Comp. R. & Regs. 1200-13-13-.10.

11. CoverKids maintains the same exclusions adopted by TennCare's Medicaid program, including its exclusion of coverage for sex-transition surgeries. *See* Tenn. Comp. R. & Regs. 1200-13-21-.06.

12. HHS has promulgated new regulations interpreting Section 1557 of the Affordable Care Act's prohibition on discrimination "on the basis of sex" to include "gender identity" and other "sex characteristics." Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 (May 6, 2024) ("2024 Rule").

13. If the 2024 Rule requires state Medicaid programs and other health insurance plans to cover sex-transition surgeries, Tennessee risks losing significant federal funding.

14. Avoiding that loss would require TennCare to make changes to its administrative rules. Changing rules is an administratively burdensome process that requires cross-government cooperation and results in the expenditure of state resources. The administrative process for permanent rules, like those that govern the terms of Tennessee's Medicaid and CoverKids programs, is governed by the Tennessee Uniform Administrative Procedures Act and takes approximately nine months to complete. This process includes rule drafting, obtaining the review and approval of the offices of the Governor and Attorney General, posting for public comment, rule-making hearing, and a hearing before the Joint Government Operations Committee of the Tennessee legislature. In addition, the Tennessee General Assembly reaffirms the existence of all

executive branch rules through legislation on an annual basis. Thus, any compliance with HHS's new regulations would require immediate expenditure of significant resources.

15. Moreover, if Tennessee's Medicaid and CoverKids programs were required to cover sex-transition surgeries, there would be an immediate increase in state and federal expenditures.



STEPHEN SMITH

Dated: 6.10.2024